

## Farm Service Agency, USDA

## § 711.19

States and counties and the establishment of reserve acreages and quotas at the national level and apportionment of such reserves among States and counties are not subject to review by a review committee. Review of a quota may include any of the factors which enter into the establishment of such quota for the farm and crop year as set forth in §711.3(f): *Provided, however*, That any factor of such quota considered by a review committee in a prior determination for the farm and crop year shall not be considered in a subsequent review proceeding. For example, a determination of the farm acreage allotment by the review committee would not be reconsidered upon any application for review of the farm marketing excess for the same farm and crop year.

[49 FR 38240, Sept. 28, 1984]

### §711.16 County committee answer.

(a) The county committee shall prepare a written answer to each application scheduled for hearing setting forth the pertinent facts, the applicable regulations, the data used in establishing the quota and any other matters deemed pertinent:

(b) *Provided*, That the answer may be limited to the issue of timely filing where the hearing is limited to that issue. If the county committee determines that the increase, adjustment or other determination requested in the application is proper in whole or in part, the written answer shall set forth the proposed determination and in such cases, the applicant shall be notified by the county committee of such proposed determination prior to the scheduled review hearing if practicable to do so. In the event the applicant is satisfied with the proposed determination, the county committee shall, upon the withdrawal of the application, take the necessary action to revise the quota within the limits of the Act and applicable commodity regulations if the required amount of acreage allotment or marketing quota is available in the county. The State executive director may perform the functions of the county committee under this section and the functions of the county committee and county executive director under §711.14 (b) and (d) in any case where the

application for review involves a notice of farm marketing quota issued by officials other than the county committee.

[35 FR 15355, Oct. 2, 1970, as amended at 49 FR 38240, Sept. 28, 1984]

### §711.17 Amendments.

Upon due request, and within the discretion of the review committee, the right to amend the application and all procedural documents in connection with any hearing, shall be granted upon such reasonable terms as the review committee may deem right and proper.

## HEARING AND DETERMINATION

### §711.18 Place and schedule of hearing.

The place of hearing shall be in the office of the county committee through which the quota sought to be reviewed was established, or such other appropriate place in the county as may be designated by the State executive director or by the review committee in cases arising under §711.21: *Provided, however*, That the place of hearing may be in some other county if agreed to in writing by the applicant. The State executive director shall schedule applications for hearings and forward such schedule to the clerk.

### §711.19 Notice of hearing.

The clerk shall give written notice on Form MQ-56 to the applicant by depositing such notice in the U.S. mail, certified and addressed to the last known address of the applicant at least 10 days prior to the time appointed for the hearing and copies of such notice shall also be sent to the county committee and the State office. If the applicant requests waiver of such 10-day period, the hearing may be scheduled earlier upon consent of the other interested parties. The notice of the hearing shall specify the time and place of the hearing, contain a statement of the statutory authority for the hearing, state that the application will be heard by the review committee duly appointed for the area of venue in which the applicant's farm is located, and that a verbatim transcript may be obtained by the applicant if he makes arrangement therefor before the hearing and pays the expense thereof.

**§ 711.20 Continuances.**

Hearings shall be held at the time and place set forth in the notice of hearing or in any subsequent notice amending or superseding the prior notice, but may without notice other than an announcement at the hearing by the chairman of the review committee, be continued from day to day or adjourned to a different place in the county or to a later date or to a date and place to be fixed in a subsequent notice to be issued pursuant to § 711.19. In the event a full committee of three is not present, those members present, or in the absence of the entire committee, the clerk, shall postpone the hearing unless the hearing is held pursuant to § 711.9 (b) or (c). There shall not be a continuance for lack of a full committee in the case of a reopened or remanded hearing where the hearing was initially held pursuant to § 711.9 (b) or (c) and the two review committeemen who previously held the hearing are present and eligible to serve.

**§ 711.21 Conduct of hearing.**

(a) *Open to public.* Except as otherwise provided in §§ 711.1 to 711.50, each hearing shall take place before the entire review committee and shall be presided over by the chairman of such committee. The hearing shall be open to the public and shall be conducted in a fair and impartial manner and in such a way as to afford the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture, and all persons appearing on behalf of such parties, reasonable opportunity to give and produce evidence relevant to the quota being reviewed.

(b) *Consolidation of hearings.* Whenever practicable, two or more applications relating to the same commodity and the same farm shall be consolidated by the review committee on its own motion or at the request of the State executive director and heard at the same time on the same record. In any case involving two or more farms resulting from reconstitution by division of a parent farm, the hearing shall be consolidated.

(c) *Representation.* The applicant and the Secretary may be represented at

the hearing. The county committee shall be present or represented at the hearing.

(d) *Order of procedure.* At the commencement of the hearing, the chairman of the review committee shall read or cause to be read the pertinent portions of the application for review. The written answer of the county committee shall be submitted and shall be made a part of the record of the hearing. If the applicant asserts and shows to the satisfaction of the review committee that he has not been informed of the county committee's position in time to afford him adequate opportunity to prepare and present his case, the review committee shall continue the hearing, without notice other than announcement thereof at the hearing, for such period of time as will afford the applicant reasonable opportunity to meet the issues of fact and law involved. After answer by the county committee and following such continuance, if any, as may be granted by the review committee, evidence shall be received with respect to the matters relevant to the quota under review in such order as the chairman of the review committee shall prescribe. The review committee may take official notice of relevant publications of the Department of Agriculture and regulations of the Secretary.

(e) *Submission of evidence.* The burden of proof shall be upon the applicant as to all issues of fact raised by him. Each witness shall testify under oath or affirmation administered by the member of the review committee who is presiding at the hearing. The review committee shall confine the evidence to pertinent matters and shall exclude irrelevant, immaterial, or unduly repetitious evidence. Interested persons shall be permitted to present oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing shall be concluded within such reasonable time as may be determined by the review committee.

(f) *Transcript of testimony.* The review committee shall provide for the taking of such notes including but not limited to stenographic reports or recordings at the hearing as will enable it to make